

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII
STEVEN DE COSTA, in his) Civil No.
representative Capacity as) 03-00598 DAE/LEK
Chairperson of the Board of)
Trustees of United Public)
Workers, AFSCME, Local 646,)
AFL-CIO, Mutual Aid Fund)
Trust, Real Party in Interest)
United Public Workers Union,)
AFSCME, Local 646, AFL-CIO,)
Plaintiffs,)
vs.)
GARY W. RODRIGUES,)
Defendant.)

DEPOSITION OF STEVEN DE COSTA
Taken on behalf of Defendant Gary W. Rodrigues at
the Law Office of Eric A. Seitz, 820 Mililani
Street, Suite 714, Honolulu, Hawaii, commencing at
9:30 a.m. on September 28, 2007, pursuant to
Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

EXHIBIT 5

<p>1 APPEARANCES:</p> <p>2 For Plaintiff</p> <p>3 CHARLES A. PRICE, ESQ.</p> <p>4 Koshiba Agena & Kubota</p> <p>5 Suite 2600, Pauahi Tower</p> <p>6 1003 Bishop Street</p> <p>7 Honolulu, Hawaii 96813</p> <p>8 (808) 523-3900</p> <p>9</p> <p>10 For Defendant</p> <p>11 Gary W. Rodrigues</p> <p>12 ERIC A. SEITZ, ESQ.</p> <p>13 820 Millilani Street, Suite 714</p> <p>14 Honolulu, Hawaii 96813</p> <p>15 (808) 533-7434</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 (Disclosure presented to Counsel.)</p> <p>2 STEVEN DE COSTA,</p> <p>3 Called as a witness by Defendant Gary W.</p> <p>4 Rodrigues, having been first duly sworn, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. SEITZ:</p> <p>8 Q. Please state your full name.</p> <p>9 A. Steven L. DeCosta.</p> <p>10 Q. And Mr. DeCosta, what is your residence</p> <p>11 address?</p> <p>12 A. 128 Muluniu Avenue, Kailua, Hawaii.</p> <p>13 Q. Have you ever had your deposition taken</p> <p>14 before?</p> <p>15 A. No.</p> <p>16 Q. I'm sure your attorney has gone over</p> <p>17 with you what happens in a deposition. But I just</p> <p>18 need to go over a couple things for the record, to</p> <p>19 make sure that it's clear that you've understood,</p> <p>20 okay?</p> <p>21 A. Yes.</p> <p>22 Q. First of all, you understand the</p> <p>23 testimony you're giving this morning is under</p> <p>24 oath, correct?</p> <p>25 A. Yes.</p> <p>Page 4</p>
<p>1 INDEX</p> <p>2 EXAMINATION Page</p> <p>3 By Mr. Seitz 4</p> <p>4 STEVEN DE COSTA</p> <p>5 Deposition Exhibits Marked</p> <p>6 1 Administrative Services Agreement 18</p> <p>7 2 May 23, 2004 Minutes 28</p> <p>8 3 May 12, 1994 letter 35</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 Q. And as you're doing, we need to get</p> <p>2 audible responses from you because the court</p> <p>3 reporter is writing everything down.</p> <p>4 So please continue to answer out loud as</p> <p>5 opposed to gestures or nods or uh-huh</p> <p>6 (affirmative), something like that, because then</p> <p>7 the record will not be clear. Okay?</p> <p>8 A. Okay.</p> <p>9 Q. Also we want to make it easier for the</p> <p>10 court reporter by not having more than one person</p> <p>11 speak at a time. So I will wait until you finish</p> <p>12 your answer. And I would appreciate if you would</p> <p>13 wait until I finish my question before you answer,</p> <p>14 that way it will be easier for him to get a</p> <p>15 complete record.</p> <p>16 A. All right.</p> <p>17 Q. You will be given an opportunity to read</p> <p>18 a transcript of these proceedings. And to make</p> <p>19 any changes that you feel are necessary.</p> <p>20 However, you have to understand that if</p> <p>21 you choose to make any changes, that somebody</p> <p>22 later can comment upon the fact that you changed</p> <p>23 your testimony. Do you understand that?</p> <p>24 A. Yes.</p> <p>25 Q. And also, so that we get as good a</p> <p>Page 5</p>

<p style="text-align: right;">Page 6</p> <p>1 record here as possible, I want to ask you to 2 please do not attempt to answer any question that 3 you don't understand. 4 So if I ask you a question which is 5 unclear, ask me to repeat it. If you don't 6 understand, I want to make sure before you answer 7 that you have understood what it is I'm asking, 8 okay? 9 A. Yes. 10 Q. If you need to take a break at any time, 11 we can do that. I don't imagine I will be more 12 than about two hours but I may even be less than 13 that. We'll see, all right? 14 A. Okay. 15 Q. What have you done to prepare for this 16 deposition? And by that I mean, first of all, 17 have you reviewed any documents or any records? 18 A. No. 19 Q. You've looked at nothing? 20 A. No. 21 Q. Did you speak with your attorney to 22 prepare for the deposition? Mr. Price? 23 A. Mr. Price? We went over. We didn't go 24 over extensively. 25 Q. I'm not going to ask you what you talked</p>	<p style="text-align: right;">Page 8</p> <p>1 A. No, one was just an associate of arts. 2 Q. And tell me how are you currently 3 employed? 4 A. I'm with the State Department of 5 Transportation. I'm at the Airport Maintenance 6 Division. 7 Q. How long have you worked with the 8 Airport Maintenance Division? 9 A. Fourteen years. 10 Q. And what is your position there? 11 A. I'm an electrician one. 12 Q. Prior to working at the airport for the 13 Airport Maintenance Division, how were you 14 employed? 15 A. I was with -- I was an electrical field, 16 in the contracting field with, I think was the HEW 17 union, Hawaii Electrical Workers. 18 Q. And when did you first become a member 19 of the UPW if you recall? 20 A. I started in 1975. 21 Q. What were you doing at that time? 22 A. I was working for the state at the state 23 hospital in Kaneohe. 24 Q. And have you maintained your membership 25 in UPW even though you were working outside state</p>
<p style="text-align: right;">Page 7</p> <p>1 about. But you spoke with him? 2 A. Yes. 3 Q. Other than Mr. Price, did you talk with 4 anybody else about this deposition or about what 5 was going to happen here? 6 A. No. 7 Q. Would you please briefly tell me what 8 your educational background is, starting from high 9 school? 10 A. I graduated from Kailua High School in 11 1971. Then '71 to '73 I went to Honolulu 12 Community College. And then right after that I 13 went to the UH for six months. Then I think I 14 went back to school in the eighties for another 15 two years and went back to Honolulu Community 16 College. 17 Q. Along the way did you receive any 18 certificates or degrees? 19 A. Yes. 20 Q. What certificates or degrees? 21 A. Two year degree from Honolulu Community 22 College and another degree from Honolulu Community 23 College, electrical work. 24 Q. Okay. Both of them were in the 25 electrical field?</p>	<p style="text-align: right;">Page 9</p> <p>1 employment? 2 A. No, 19 -- in the, I think it was '82, 3 '84 I got out. I went to construction. Went 4 back to school. 5 Then in the last 14 years, whatever date 6 that was, that I went back to the union with the 7 state. 8 Q. When was the first time you held any 9 position with the union as a union steward or any 10 other position? 11 A. That's back in the 1970s. I was a shop 12 steward. 13 Q. And what other positions other than shop 14 steward have you held? 15 A. Shop steward, chief steward. Been on 16 Oahu division board. State Executive Board for 17 UPW. 18 Currently I'm on the -- I'm the UPW 19 state president. I'm also with the AFL-CIO 20 Executive Board. 21 Q. When did you first serve on the State 22 Executive Board of UPW? 23 A. Say about ten years ago. Roughly give 24 or take a few years, about ten years ago. 25 Q. Approximately 1997, 1998?</p>

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1 A. Yes.
 2 Q. And who chose you or elected you to be
 3 on the State Executive Board?
 4 A. The members. The members vote for us.
 5 Q. So you were elected by the Oahu
 6 division?
 7 A. Yeah. The Oahu -- members of the island
 8 of Oahu.
 9 Q. And have you been on the Executive Board
 10 consistently since you were first elected in about
 11 1997, 1998?
 12 A. Yes.
 13 Q. And now you are the president; is that
 14 correct?
 15 A. Yes.
 16 Q. Prior to being president have you held
 17 any other offices on the Executive Board?
 18 A. No.
 19 Q. When were you elected president?
 20 A. Four years ago.
 21 Q. And who was the president just prior to
 22 you?
 23 A. I think it was his name was George
 24 Yasumoto.
 25 Q. And prior to George Yasumoto do you

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1 know who the president was?
 2 A. Adaline Uhrle.
 3 Q. When does your term as president
 4 expire?
 5 A. It's a three year term. So I was just
 6 elected. This is my first year. So I believe
 7 2009.
 8 Q. So this is actually your second term --
 9 first year of your second term; is that correct?
 10 A. Yes.
 11 Q. You also hold a position with a Mutual
 12 Aid Fund Trust; is that correct?
 13 A. Yes, sir.
 14 Q. When did you first hold any position
 15 with the Mutual Aid Fund Trust?
 16 A. I believe it was this term.
 17 Q. And when were you selected to be on the
 18 Board of Trustees of the trust?
 19 A. It comes automatically when you're the
 20 state president. You become the Chairperson of
 21 this committee.
 22 Q. You've been the Chairperson since you
 23 were first elected president?
 24 A. Yes. Which is three years ago.
 25 Q. Okay. Prior to being placed on the

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1 board of the Mutual Aid Fund Trust, had you had
 2 any contact or familiarity with that entity? Did
 3 you know anything about it?
 4 A. When I'm on a state executive board.
 5 Q. And how did you hear about the Mutual
 6 Aid Fund Trust prior to being on the actual Board
 7 of Trustees?
 8 A. It's a thing that our members can sign
 9 up to be MAF member. I think it's \$1, \$2 dollars
 10 a month that you can put in from your paycheck,
 11 and you can receive whatever benefits from the MAF
 12 trust.
 13 Q. Do you know when the trust was
 14 established?
 15 A. Not offhand.
 16 Q. Do you know who was involved in
 17 establishing it when it was first started?
 18 A. No.
 19 Q. What is the purpose of the Mutual Aid
 20 Fund Trust?
 21 A. The Mutual Aid Fund Trust deals with a
 22 lot of hospitalization of our members.
 23 Hospitalization. And they go into the hospital
 24 and then after -- it allows you, I think \$25, \$30
 25 per day it pays you from this trust.

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1 Q. Is it a voluntary participation?
 2 A. Yes, it's voluntary.
 3 Q. Prior to becoming the chairman of the
 4 Board of Trustees, did anybody give you any
 5 instructions or guidance as to what your duties
 6 would be?
 7 A. To be the Chairperson of this MAF?
 8 Q. Yes.
 9 A. Offhand -- the Chairperson comes with
 10 the position of being a state president. So I
 11 just -- we have an agenda, and we just conduct it
 12 in the meeting.
 13 Q. Did anyone ever give you any directions
 14 or instructions or guidance about what it means to
 15 be a trustee?
 16 A. Offhand, no, I don't remember.
 17 Q. Prior to becoming the Chairperson of the
 18 Mutual Aid Fund Trust, had you ever been a trustee
 19 of any organization before?
 20 A. No.
 21 Q. Do you know what the term "fiduciary"
 22 means?
 23 A. I've heard about it, yes.
 24 Q. What is your understanding, as you sit
 25 here today, about what that term means?

<p style="text-align: right;">Page 14</p> <p>1 A. Well, it was mentioned it was a 2 fiduciary -- everybody on the board has a 3 fiduciary responsibility about conducting the 4 meetings and the legality of it all, the legal 5 part of the paperwork and so forth. 6 Q. And do you know to whom you owe that 7 duty or obligation? 8 A. To our members. 9 Q. Have you ever received any instruction 10 of any sort from any lawyers or anybody else as to 11 what it means to be a fiduciary? 12 A. I believe we went through over it in a 13 couple of the meetings, but offhand I can't tell 14 you if we met with a lawyer or not. 15 Q. Have you ever read any of the documents 16 that formed the basis for the Mutual Aid Fund 17 Trust, the trust documents themselves? 18 A. Not recently. 19 Q. Did you read them at one time? 20 A. I can't remember. 21 Q. Do you know if they were provided to you? 22 A. The minutes of the meeting of the -- 23 Q. Not the minutes but the trust documents 24 themselves. 25 A. I can't remember.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. As long as you have been on the board, 2 has Jeanne Endo been attending meetings and coming 3 in as well? 4 A. Yes. 5 Q. In addition to those two people, you 6 also have an accountant who does regular audits; 7 is that correct? 8 A. Yes. 9 Q. And provides regular written audit 10 reports? 11 A. Yes. 12 Q. Are those distributed to the members of 13 the board? 14 A. Yes. 15 Q. And do you read them? 16 A. Yes. 17 Q. When you have a -- typically, when you 18 have a meeting of the board of the Mutual Aid Fund 19 Trust, what kind of items are on the agenda? What 20 do you discuss? 21 A. We discuss that account, and how much is 22 in there and where the money went to and how much 23 is left, and so forth. 24 Q. And do you vote on any matters? 25 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. How often does the Mutual Aid Fund Trust 2 meet? 3 A. Maybe once every two to three months. 4 Usually after our general meeting. State 5 Executive Board meeting. 6 Q. And how many members are there on the 7 Mutual Aid Fund Trust board? 8 A. There's VPs from the different islands. 9 I think maybe from six to eight members. 10 Q. And when the Mutual Aid Fund Trust 11 meets, who actually conducts the meetings? 12 A. I do. 13 Q. And who prepares the agenda? 14 A. Our state director. 15 Q. And so that's Dayton Nakanelua? 16 A. Yes. 17 Q. Does anyone else provide any kind of 18 staffing function for the Mutual Aid Fund Trust? 19 A. You're asking does he bring in any other 20 staffing? 21 Q. Yes. 22 A. Usually, our administrative director of 23 the business office comes in. 24 Q. And who is that? 25 A. Jeanne Endo.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. What kinds of matters do you vote on? 2 A. Whatever is on the agenda. I don't know 3 offhand. 4 Q. Since you've been the president, how 5 long, typically, is a meeting of the Board of 6 Trustees of the Mutual Aid Fund Trust? 7 A. I'd say about an hour. 8 Q. Since you've been there, have there ever 9 been any recommendations that have been brought to 10 the board by the state director, which the board 11 has rejected? 12 A. Offhand I can't remember. I can't 13 recall. 14 Q. Is it your impression, as you sit here 15 today, that when the state director makes 16 recommendation the board normally goes along with 17 it? 18 A. Well, with the information -- it's a 19 real democratic process. Everybody is allowed to 20 give their input, and so forth. And there's -- 21 like I said, what are -- they are going to decide 22 on whatever information that is put upon them. 23 But it's a real open process. 24 Q. You were not on the Mutual Aid Fund 25 Trust Board of Directors, Board of Trustees when</p>

<p style="text-align: right;">Page 18</p> <p>1 Gary Rodrigues was the state director; is that 2 correct? 3 A. Yes, I wasn't on there. 4 Q. But you were on the Executive Board at 5 that time? 6 A. Yes. 7 Q. Are you aware of some agreement between 8 the Mutual Aid Trust and the UPW by which the UPW 9 provides staff to the Trust? Are you aware of any 10 such agreement? 11 A. No. 12 Q. Let me show you what I'm going to ask 13 the court reporter to mark as Exhibit 1 for the 14 purpose of this deposition. 15 (Whereupon, an Administrative Services 16 Agreement was marked as Exhibit 1 for 17 Identification.) 18 Q. Let me put this one before you. That 19 is the one we're going to have the court reporter 20 include in the record. 21 I want to ask you after you look at 22 that, is that a document that you've ever seen 23 before? 24 A. Not that I know of, no. 25 Q. Do you know if the Mutual Aid Fund Trust</p>	<p style="text-align: right;">Page 20</p> <p>1 these things which are listed in section 2? 2 (Pause.) 3 A. What was your question again? 4 Q. My question to you is does this section, 5 A through I, describe in your experience what Mr. 6 Nakanelua does as the administrator for the fund? 7 Does he do all those things? 8 A. Offhand I can't tell you yes or no. 9 Q. Okay. Who handles the money that the 10 fund administers? 11 A. Our business office. And they have -- 12 they have an account with a certain bank or 13 whatever that holds the account. 14 Q. And do you know who writes checks on 15 those funds? 16 A. When a person -- how it works when a 17 person takes out from the MAF, he has to bring 18 hospital documents from the doctor. Then he gets 19 reimbursed so many days from the business office. 20 The business office cuts the checks. 21 Q. Let me ask you about investments. If 22 some portion of the money from the Mutual Aid Fund 23 Trust is going to be invested and the board agrees 24 to a particular investment, who actually writes 25 the check?</p>
<p style="text-align: right;">Page 19</p> <p>1 pays any money to UPW on a regular basis for 2 administrative services provided to the Trust by 3 UPW? 4 A. No. 5 Q. You're not aware? 6 A. No, I'm not aware. 7 Q. Do you know when Mr. Nakanelua or Ms. 8 Endo or any of her staff provides services to the 9 trust, whether the trust compensates them for the 10 time and expenses that they incur? 11 A. I don't think so. No. Because they are 12 part of the UPW staff. 13 Q. Is it your understanding that the UPW 14 staff provides services to the Trust without the 15 UPW being compensated for those services? Is that 16 your understanding? 17 A. I believe so it is. 18 Q. Look if you would at this document, 19 Exhibit 1 at section 2. 20 A. Section 2, okay. 21 Q. And it talks about an administrator of 22 the entity to which this refers which is the 23 United Public Workers Mutual Aid Trust. 24 And I want to ask you if, based upon 25 your experience, if Mr. Nakanelua does all of</p>	<p style="text-align: right;">Page 21</p> <p>1 A. I don't know. 2 Q. Do you know whether the checks have to 3 be countersigned by any of the trustees? 4 A. I'm not sure. I don't know. 5 Q. Do you know if Dayton Nakanelua or 6 Jeanne Endo are allowed to write checks on funds 7 belonging to the Mutual Aid Fund Trust by 8 themselves? 9 A. I don't know. I can't answer that. 10 Q. When you make an investment decision as 11 a board currently under your leadership as the 12 chairman, can you describe for me the process by 13 which that decision is made? 14 A. What happens is the -- it brings up to 15 the MAF. And then we make -- we act on the 16 information that's given to us. And we vote on it. 17 Then after we take it -- we -- the next 18 thing we take it to the State Executive Board for 19 the final approval. 20 Q. Is it your understanding that investment 21 decisions pertaining to funds belonging to the 22 Trust have to be approved by the State Executive 23 Board? 24 A. Yes. 25 Q. And has that been going on as long as</p>

<p style="text-align: right;">Page 22</p> <p>1 you can remember?</p> <p>2 A. Under the new administration.</p> <p>3 Q. When Mr. Rodrigues was there, were</p> <p>4 decisions made by the Board of Trustees of the</p> <p>5 Mutual Aid Fund Trust taken to the Executive Board</p> <p>6 for approval?</p> <p>7 A. I don't remember.</p> <p>8 Q. What kind of information do you as a</p> <p>9 board receive, speaking now about the Mutual Aid</p> <p>10 Fund, what kind of information do you receive</p> <p>11 about prospective investments to assist you in</p> <p>12 making decisions?</p> <p>13 A. Well, like I -- we haven't -- like I</p> <p>14 say, we haven't really moved the money around, the</p> <p>15 MAF. Usually it just stays there for our</p> <p>16 employees, state, and city, county employees.</p> <p>17 Q. So since you've been on the board there</p> <p>18 have been no investment decisions. Is that fair</p> <p>19 to say?</p> <p>20 A. I don't remember any.</p> <p>21 Q. Are you familiar with a person by the</p> <p>22 name of Albert Hewitt?</p> <p>23 A. I heard that name. But I'm not really</p> <p>24 familiar with him.</p> <p>25 Q. When you were on the Executive Board did</p>	<p style="text-align: right;">Page 24</p> <p>1 But offhand, no.</p> <p>2 Q. As you sit here today, you don't have</p> <p>3 any clear recollection of anything other than some</p> <p>4 familiarity with that name?</p> <p>5 A. I heard about the Best Rescue and Mr.</p> <p>6 Hewitt but offhand I couldn't tell you the dates</p> <p>7 and times.</p> <p>8 Q. As a member of the Board of Trustees of</p> <p>9 the Mutual Aid Fund, did you ever discuss and make</p> <p>10 decisions about suing Gary Rodrigues?</p> <p>11 A. Right now?</p> <p>12 Q. Yes. For this lawsuit. Were you ever</p> <p>13 involved in any discussions about whether to sue</p> <p>14 Gary Rodrigues?</p> <p>15 A. I believe we talked about it as being</p> <p>16 part of the Mutual Aid.</p> <p>17 Q. And as you sit here today, can you tell</p> <p>18 me why Gary Rodrigues is being sued by the Mutual</p> <p>19 Aid Fund Trust?</p> <p>20 A. I believe he was the state director at</p> <p>21 the time that the money was invested.</p> <p>22 Q. And what did he do or fail to do, as you</p> <p>23 understand it, that would make him liable for a</p> <p>24 lawsuit?</p> <p>25 A. I'm not sure. I'm not a lawyer. I</p>
<p style="text-align: right;">Page 23</p> <p>1 you ever receive any reports or any information</p> <p>2 about Mr. Hewitt?</p> <p>3 A. I heard about his name. We might</p> <p>4 have. But offhand, no. But I've heard about Mr.</p> <p>5 Hewitt.</p> <p>6 Q. Do you know anything about the process</p> <p>7 by which Mr. Hewitt came to handle certain monies</p> <p>8 for UPW and/or for the Mutual Aid Fund Trust?</p> <p>9 A. No.</p> <p>10 Q. Do you have any knowledge about any</p> <p>11 decisions that were made with respect to an</p> <p>12 investment of funds in an entity called Best</p> <p>13 Rescue?</p> <p>14 A. No.</p> <p>15 Q. You were not on the board when any</p> <p>16 investments were made?</p> <p>17 A. I wasn't a -- the Mutual Aid. I was</p> <p>18 just on the state executive.</p> <p>19 Q. Going back down to your service on the</p> <p>20 State Executive Board, do you recall any</p> <p>21 discussion at any time about an entity by the name</p> <p>22 of Best Rescue?</p> <p>23 A. I might have. But offhand I couldn't</p> <p>24 remember the date. I would have to check that</p> <p>25 previous meetings of the State Executive Board.</p>	<p style="text-align: right;">Page 25</p> <p>1 couldn't answer that.</p> <p>2 Q. When the decision was made to sue Gary</p> <p>3 Rodrigues, was there ever any discussion about</p> <p>4 suing the trustees who were on the board when any</p> <p>5 investment decisions were made for which Gary</p> <p>6 Rodrigues is now being sued?</p> <p>7 A. Not that I know of, no.</p> <p>8 Q. Do you know of any reason why only Gary</p> <p>9 Rodrigues was sued?</p> <p>10 A. No.</p> <p>11 Q. Are you familiar with a settlement that</p> <p>12 was reached in connection with some of the matters</p> <p>13 pertaining to this litigation with Mr. Hewitt or</p> <p>14 his insurance company?</p> <p>15 A. I might have heard about it. But I'm</p> <p>16 not sure about the amount or dates and times.</p> <p>17 Q. Did you ever vote whether to accept a</p> <p>18 settlement?</p> <p>19 A. I don't remember.</p> <p>20 Q. When Mr. Rodrigues left his position as</p> <p>21 state director, who was responsible for operating,</p> <p>22 for the day to day operations and administration</p> <p>23 of the Mutual Aid Fund Trust?</p> <p>24 A. We were put on administrative shift by</p> <p>25 our parent union.</p>

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1 Q. And that's AFSCME; is that correct?

2 A. Yes.

3 Q. And do you know what the legal basis

4 was for taking over the Mutual Aid Fund Trust as

5 opposed to the local union itself?

6 A. No.

7 Q. Did anyone ever receive any

8 justification or authority from the union,

9 national union, for taking over the Mutual Aid

10 Fund Trust as opposed to administering UPW local

11 union itself?

12 A. No, sir.

13 Q. During the period of time that the

14 Mutual Aid Fund Trust was taken over and

15 administered by AFSCME, who was responsible

16 for operating the Mutual Aid Fund Trust, do you

17 know?

18 A. Usually the business office handles all

19 those transactions. But usually it depends on the

20 member. He brings in his paperwork and if -- once

21 he gets reimbursed he has to have all his

22 paperwork in order. Then he gets reimbursed by

23 the business office.

24 Whether that account was put on hold

25 under the receivership, I don't know. I wasn't

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1 part of the MAF group.

2 Q. When was the board reinstated, the Board

3 of Trustees of the Mutual Aid Fund Trust, when

4 were they reinstated after the receivership? Do

5 you know?

6 A. I think we were on the receivership for

7 about a year.

8 Q. When the board was reinstated were you

9 then on the board at that time, from the time that

10 it was reinstated?

11 A. That was after our state elections, I

12 believe.

13 Q. What was after your state elections?

14 A. After when we had our state elections

15 and the top officers were elected, asked them --

16 well, after that we were taken off the

17 administratorship.

18 Q. You were already the president of UPW

19 and then by virtue of that position, the

20 Chairperson of the Mutual Aid Fund Trust when

21 control over that entity was turned back to the

22 local union. Is that fair to say?

23 A. That's usually how it works, yes.

24 Q. When the responsibility for the Mutual

25 Aid Fund Trust was turned back to the union, was

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1 there ever a lawsuit pending against Mr. Rodrigues

2 in this case?

3 A. I'm not sure. I cannot tell you.

4 Q. Do you have any recollection of anyone

5 ever sitting down with the board and briefing you

6 on the decisions that had been made to sue Mr.

7 Rodrigues?

8 A. I believe we went through that when I

9 was part of the MAF.

10 Q. And what were you told? What is your

11 recollection about what you were told?

12 A. That we were trying to receive some of

13 this money back.

14 Q. And were you given any information as to

15 why you were trying to receive it back from Mr.

16 Rodrigues?

17 A. Well, that's been a few years ago. I

18 can't remember offhand.

19 Q. Let me ask the court reporter to mark

20 this, please, as Exhibit 2.

21 (Whereupon, May 23, 2004 Minutes were

22 marked as Exhibit 2 for Identification.)

23 Q. Let me ask you first, please, to look

24 at that document which consists of three pages,

25 and tell me if it is a document that you

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1 recognize?

2 (Pause.)

3 A. All right. Yeah, I recognize it.

4 Q. What is that document?

5 A. It's part of the MAF meeting at the Ala

6 Moana Hotel.

7 Q. To the best of your knowledge, is this a

8 true and accurate copy of the minutes of the

9 meeting that was conducted on May 23, 2004?

10 A. I believe it is.

11 Q. And at that time on May 23, 2004 was the

12 individual whose signature appears here the

13 secretary who was responsible for keeping the

14 minutes?

15 A. Yes.

16 Q. And you were the president; is that

17 correct?

18 A. Yes, sir.

19 Q. Now, if you look down at item 3 it

20 indicates that Jeanne Endo and Chip Uwaine were

21 both also present; is that correct?

22 A. Usually they are at our meetings, the

23 two of them.

24 Q. If you look at the next item, paragraph

25 4, it says, "state director." Is that referring

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1 to Dayton Nakanelua?
 2 A. So where are you at?
 3 Q. The first page. Item 4, A. It says,
 4 "state director."
 5 A. Yes.
 6 Q. That's referring to Dayton?
 7 A. Yes, sir.
 8 Q. Presumably, what that means is that
 9 Dayton was handling these items on the agenda; is
 10 that correct?
 11 A. Yeah.
 12 Q. So the first item was some item having
 13 to do with the high degree of responsibility of
 14 trustees; is that correct?
 15 A. Yes.
 16 Q. Can you amplify or explain to me what
 17 was discussed under that topic?
 18 A. I can't remember offhand. Just -- well,
 19 from looking at it, it's just that -- he's just
 20 telling us the responsibilities of being part of
 21 the MAF group, the board.
 22 Q. Okay. Then if you would look down at
 23 number 7. It says, "litigation."
 24 A. Yes.
 25 Q. "UPW versus Gary Rodrigues." That's

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1 this case; is that correct?
 2 A. Yes.
 3 Q. And it says under there, "\$1.1 million
 4 loan to Best Rescue system." Do you see that
 5 there?
 6 A. Yes.
 7 Q. Do you remember what Mr. Nakanelua
 8 reported to the board when he talked about that
 9 particular loan?
 10 A. No, I don't remember.
 11 Q. It says here that the "loan was approved
 12 without due diligence (risky company) by former
 13 trustees." Do you see that?
 14 A. Yes.
 15 Q. What did Mr. Nakanelua say about that?
 16 A. I don't remember.
 17 Q. Did you ever ask?
 18 A. I might have. But like I said, this is
 19 2004. We're in 2007 right now. I can't remember.
 20 Q. Well, let me ask you this, Mr. DeCosta.
 21 If in fact the loan was approved without due
 22 diligence, that it was a risky company, and that
 23 that action was taken by the former trustees, why
 24 aren't they being sued?
 25 A. I'm not sure. I couldn't say.

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1 Q. Then he goes on to say under this topic
 2 item 3, "former trustees approved \$1.1 million as
 3 uncollectible."
 4 Do you see that?
 5 A. Yes.
 6 Q. Do you know who those former trustees
 7 were?
 8 A. I believe he's talking about the former
 9 trustees on the MAF board.
 10 Q. Do you know who any of them were?
 11 A. Offhand, no. I mean I could, yeah, I
 12 could tell you the former state president was part
 13 of the -- was one of the trustees.
 14 Q. That's George Yasumoto?
 15 A. Yeah, and usually it's all the VPs from
 16 the different islands are part of the MAF board.
 17 Q. Are there any members of the Board of
 18 Trustees now, of the Mutual Aid Fund, who were
 19 previously on the board when Gary Rodrigues was
 20 there?
 21 A. I believe private sector Alison Leong
 22 is still part of that.
 23 Q. How about George Yasumoto?
 24 A. No.
 25 Q. Anybody else?

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1 A. I believe she is the only one offhand.
 2 Q. Was Alison Leong, according to these
 3 minutes, was she present at this particular
 4 meeting?
 5 A. It seems like it because she approved
 6 the agenda.
 7 Q. And then you look at under 7 at b, do
 8 you see that?
 9 A. 7b.
 10 Q. "Motion made to affirmatively ratify the
 11 Administrator's decision to file the action
 12 against Rodrigues and approve the continuation of
 13 the litigation."
 14 Do you see that?
 15 A. Yes.
 16 Q. Who made that motion, do you know?
 17 A. No, I don't remember.
 18 Q. If you look down below it says, "Yvonne
 19 Gaspar, motion. Second --
 20 A. Angel Santiago."
 21 Q. Does that indicate that they made the
 22 motion and seconded it respectively?
 23 A. Yes.
 24 Q. And then it was carried. Do you see
 25 that?

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<p>1 A. Yes.</p> <p>2 Q. Do you know if Alison Leong voted on</p> <p>3 that particular motion?</p> <p>4 A. I'm not sure.</p> <p>5 Q. There is no indication that she recused</p> <p>6 herself, is there?</p> <p>7 A. Yes, there is no.</p> <p>8 Q. Did you vote on that particular motion?</p> <p>9 A. Usually we'll vote but it doesn't</p> <p>10 signify that I did or not.</p> <p>11 Q. Do you recall voting to ratify the</p> <p>12 actions to continue the lawsuit?</p> <p>13 A. No.</p> <p>14 Q. You don't recall. Do you recall any</p> <p>15 reasons that were given why anybody voted to</p> <p>16 ratify the decision to continue the lawsuit</p> <p>17 against Mr. Rodrigues?</p> <p>18 A. I believe they voted because they wanted</p> <p>19 to see if they could have the money -- get</p> <p>20 recovery of some of this \$1.1 million.</p> <p>21 Q. As you sit here today, do you have any</p> <p>22 knowledge or any reason to believe that Gary</p> <p>23 Rodrigues had any responsibility for the</p> <p>24 investment that went bad that is the subject</p> <p>25 matter of this lawsuit?</p>	<p>1 Q. Have you had a chance to look at it?</p> <p>2 A. Just briefly.</p> <p>3 Q. Have you ever seen this letter before?</p> <p>4 A. I don't remember. I don't think so.</p> <p>5 Q. Do you know who the author of the letter</p> <p>6 is, Larry Weinberg?</p> <p>7 A. Yes, I've met Mr. Weinberg. He's part</p> <p>8 of AFSCME.</p> <p>9 Q. He's the general counsel?</p> <p>10 A. Yes.</p> <p>11 Q. You've never seen this letter, to the</p> <p>12 best of your recollection?</p> <p>13 A. No.</p> <p>14 Q. Is one of the things that Mr. Weinberg</p> <p>15 does is to give legal advice to UPW and in this</p> <p>16 case to the Mutual Aid Fund Trust? Is that what</p> <p>17 his duties include?</p> <p>18 A. I'm not sure. But we've used the</p> <p>19 services in the past. Because they are our parent</p> <p>20 union.</p> <p>21 Q. You've used his services for what kinds</p> <p>22 of things in the past?</p> <p>23 A. He's come to our meetings, our state</p> <p>24 convention meetings.</p> <p>25 MR. SEITZ: Okay, Mr. DeCosta. I think</p>
Page 35	Page 37
<p>1 A. Only that he was the state director at</p> <p>2 the time. Are you finished with this one?</p> <p>3 Q. Yes. You are now the named plaintiff in</p> <p>4 this case; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. When were you first approached to</p> <p>7 become the named plaintiff?</p> <p>8 A. A few months back.</p> <p>9 Q. And what is your understanding about why</p> <p>10 you are the named plaintiff?</p> <p>11 A. Something about it was legally that they</p> <p>12 couldn't have all these people on that. I would</p> <p>13 be, since I'm the Chairperson of the committee.</p> <p>14 Q. Prior to the time when you were</p> <p>15 actually named as the lead plaintiff in this case</p> <p>16 or named plaintiff, had there ever been any</p> <p>17 discussion about naming you as the plaintiff</p> <p>18 previously?</p> <p>19 A. No.</p> <p>20 Q. Let me then lastly show you what I'm</p> <p>21 going to have the court reporter to mark as</p> <p>22 Exhibit 3.</p> <p>23 (Whereupon, a May 12, 1994 letter was</p> <p>24 marked as Exhibit 3 for Identification.)</p> <p>25 (Pause.)</p>	<p>1 I'm done. Thank you.</p> <p>2 (Deposition concluded at 10:15 a.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 I, STEVEN DE COSTA, hereby certify that
2 I have read the foregoing typewritten pages; and
3 corrections, if any, were noted by me; and the
4 same is now an accurate and complete transcript of
5 my testimony.

6
7 Dated at _____ Hawaii
8 this _____ day of _____, 2007
9

10 _____
11 STEVEN DE COSTA
12
13

14 Signed before me this _____ day
15 of _____, 2007.
16

17 _____
18 Witness to Deponent's Signature
19
20
21

22 Steven De Costa, et al. vs. Gary W. Rodrigues
23 Civil No. 03-00598 DAE/LEK, September 28, 2007
24 by William T. Barton, RPR, CSR.
25

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1 CERTIFICATE

2 STATE OF HAWAII)
3) SS.
4 COUNTY OF HONOLULU)

5 I, WILLIAM T. BARTON, RPR, Certified
6 Shorthand Reporter, State of Hawaii, do hereby
7 certify that on September 28, 2007 at 9:30 a.m.
8 there appeared before me STEVEN DE COSTA, the
9 witness whose deposition is contained herein; and
10 that prior to being examined was duly sworn; that
11 I am neither counsel for any of the parties
12 herein, nor interested in any way in the outcome
13 of this action;

14 That the deposition herein was by me taken
15 down in machine shorthand and thereafter reduced
16 to print via computer-aided transcription under my
17 supervision; that the foregoing represents a
18 complete and accurate transcript of the testimony
19 of said witness to the best of my ability.

20 Dated this 2nd day of October 2007 at
21 Honolulu, Hawaii.
22

23 _____
24 WILLIAM T. BARTON, CSR No. 391
25 Notary Public, State of Hawaii
My Commission expires August 7, 2009